IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 2696 of 2006
Date of decision 8 .9.2006

Kesho Ram .. petitioner

Versus

State of Haryana and others .. Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE P.S.PATWALIA

PRESENT: Mrs.Sarla Chaudhary, Advocate for the petitioner
Mr. Harish Rathee, Sr. DAG Haryana.

M.M.Kumar, J.

This petition filed under Article 226 of the Constitution prays for issuance of a direction to the respondents to grant the petitioner pensionary benefit by counting his whole period of daily wage service as Beldar before regularisation as a qualifying service. It is admitted position that the petitioner was engaged on daily wages in March 1972 and thereafter his services were regularised w.e.f. 31.3.1993 in the pay scale of Rs. 730-12-870-14-940. He retired on 31.1.1999 at the age of 60 years after rendering regular service for 5 years 10 months. It is also admitted position that he had rendered work charge service w.e.f. March 1972 till he was regularised on 31.3.1993. He has not been paid any pension or other retiral benefits on the ground that he did not have 10 years qualifying service to his credit as is required by Rule 6.16(1) of the Punjab Civil Services Rules, Volume II (as applicable to Haryana). The matter is no longer res-integra as un-amended Rule 3.17 which confined the qualifying service only to the period of regular service was struck down by a Full Bench of this Court in the case of Kesar Chand v. State of Punjab 1988(3) PLR 223. Rule 3.17(ii)

as applicable in the State of Punjab had specifically provided that the period of service in work charge establishment was not to be taken into account for determining qualifying service of an employee. The afore-mentioned rule was declared as ultra vires of Article 14 of the Constitution. The view of the Full Bench is discernible from para 19 of the judgement which reads as under:

> "..... Once the services of a work charged employee have been regularised, there appears to be hardly any logic to deprive him of the pensionary benefits as are available to other public servants under rule 3.17 of the Rules. Equal protection of laws must mean the protection of equal laws for all persons similarly situated. Article 14 strikes at arbitrariness because a provision which is arbitrary involves the negation of equality. Even the temporary or officiating service under the State Government has to be reckoned for determining the qualifying service. It looks to be illogical that the period of service spent by an employee in a work charged establishment before his regularisation has not been taken into consideration for determining his qualifying service. The classification which is sought to be made among Government servants who are eligible for pension and those who started as work charged employees and their services regularised subsequently, and the others is not based on any intelligible criteria and, therefore, is not sustainable at law. After the services of a work charged employee have been regularised, he is a public servant like any other servant. To deprive him of the pension is not only unjust

and inequitable but is hit by the vice of arbitrariness, and for these reasons the provisions of sub rule (ii) of rule 3.17 of the Rules have to be struck down being violative of Article 14 of the Constitution."

We further find that the afore-mentioned view taken by the Full Bench has been followed by a Division Bench of this Court in the case of Mangat Ram v. Haryana Vidyut Prasaran Nigam Ltd. And others 2005(5) SLR 793 wherein again it has been held that the services rendered by a daily wager followed by regularisation of his service deserved be considered as qualifying service for the purposes of pension and other retiral benefits. The view taken by this Court has lead to addition of Rule 3.17(A) of the Punjab Civil Service Rules, Volume II (as applicable to Haryana) which provides that all service interrupted or continuous followed by confirmation shall be treated as qualifying service and the period of break are to be omitted while working out the aggregate service. Accordingly we are of the considered view that this petition deserves to be allowed.

The stand of the respondents placing reliance on Rule 6.16(A) of Punjab Civil Services Rules, Volume II (as applicable to Haryana) would not require any detailed consideration because the afore-mentioned view is applicable only for payment of additional gratuity to those who became eligible for pension and gratuity under the rules applicable to such employees on completion of five years qualifying service. Therefore, we do not find any merit in the stand taken by the learned counsel for the respondents.

In view of the above, writ petition is allowed. The respondents are directed to release the pensionary benefits to the petitioner after taking

into account the whole period of work charge service alongwith regular service. The petitioner is also held entitled to interest @ 9 percent p.a. on the delayed payment from the date of his retirement till its payment. The needful shall be done by the respondents within a period of two months from today.

(M.M.Kumar)
Judge

(P.S.Patwalia)
Judge

8.9.2006
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